

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Policies and Rules Governing Interstate Pay-)	
Per-Call and Other Information Services)	CC Docket No. 96-146
Pursuant to the Telecommunications Act of)	
1996)	
)	
Policies and Rules Governing Interstate Pay-)	
Per-Call and Other Information Services, and)	CG Docket No. 04-244
Toll-Free Number Usage)	
)	
Truth-in-Billing Format and Billing Format)	
)	CC Docket No. 98-170
)	
Policies and Rules Implementing the)	RM-8783
Telephone Disclosure and Dispute Resolution)	
Act, Florida Public Service Commission)	
Petition to Initiate Rulemaking to Adopt)	
Additional Safeguards)	
)	
Application for Review of Advisory Ruling)	
Regarding Directly Dialed Calls to International)	
Information Services)	
)	ENF-95-20

COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

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COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

Metro One Telecommunications, Inc. (“Metro One”), by its attorney, hereby submits its Comments in response to the Commission’s Notice of Proposed Rulemaking and Memorandum Opinion and Order (“Further 800 NPRM”), FCC 04-162, released July 16, 2004. Metro One’s comments concern issues raised in the Further 800 NPRM pertinent to the exemption accorded common carriers, local exchange carriers - - and

their respective affiliates - - providing directory services including Directory Assistance (“DA”) and Enhanced Directory Assistance (“EDA”), utilizing toll free numbers.¹

1. Background

Metro One is a national provider of DA and EDA, as the agent of certain wireless carriers, providing both intraLATA and interLATA live operator-assisted DA and EDA, as well as call completion to subscribers of wireless carriers.² Metro One also offers its services to landline-based carriers, including competitive local exchange carriers ("CLEC's") as their DA/EDA agent. Metro One's EDA services enable end-users to obtain "traditional" DA (i.e., telephone numbers of individuals and entities), and call completion, as well as a host of EDA services, which include movie listings, information on local events, reservations (such as concerts and sporting events), geographic directions, weather warnings, private directory access and school closings. In all these instances, Metro One is accessed by the carrier's subscriber using the carrier's 411 dialing pattern so that the DA and EDA are provided to the customers of the carrier for whom Metro One serves as the DA/EDA agent in a seamless, real time manner.

Metro One's wholly owned subsidiary, Infone LLC, offers its DA/EDA service directly to the public via presubscription using 888 toll free access numbers. Infone's concierge services include a wide variety of (a) personal assistant services handling contact data bases, calendars and personal preferences; (b) “TeleConcierge,” for making reservations and performing other concierge services; movie listings and reviews;

¹ See Section 228(i)(2) of the Communications Act of 1934, as amended (the “Act”).

² Metro One is headquartered in Beaverton, Oregon and has 31 DA call centers located throughout the United States. Metro One has invested millions of dollars in its facilities and has built multiple call centers to better serve its customers (ultimately subscribers/consumers) with redundant high availability systems and operators who can provide in-depth knowledge of local information. One or more of Metro One's DA call centers are located in each of the Regional Bell Operating Company ("RBOC") operating areas.

directions and roadside assistance; (c) uploading personal contacts and calendar for access from any telephone; and, of course, (d) directory assistance and call completion. Although Infone is certificated or recognized as a carrier in all 50 states of the United States, it is not facilities-based nor does it own licensed spectrum. As a result, the only avenue for it to provide retail DA/EDA competition comparable to 411 carriers such as ILECs, CLECs and wireless carriers is via its distinctive toll free number, 888-411-1111.

2. EDA Falls Within The Directory Services Exemption Under Section 228 of the Communications Act.

The Further 800 NPRM requests comment on whether or how to further define the term “directory services” that are exempt from the certain pay-per-call requirements regardless of whether any presubscription or comparable agreement exists. Further 800 NPRM at para. 34. Metro One believes that further definition in this regard is unnecessary because “directory services” is sufficiently generic to include EDA and future services that may constitute directory services. Indeed, the fact that EDA is a growing market for the past seven years in which the Commission wishes to promote competition and innovation³ makes a further limiting definition of EDA counter-productive and unwise policy.

In the 1996 Act, Congress clearly chose to use the broad term “directory services” in according the expansive exemption at issue. Congress could have used the term “directory assistance” as identified in Section 251(b)(3) of the Act or the working definition of subscriber list information used for the publication of directories as used in Section 222(b) of the Act. Instead, however, Congress made a choice to use a generic

³ In the matter of the Provision of Directory Listing Information Under the Communications Act of 1934, As Amended; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, (“DLI NPRM”) FCC 01-384 released January 9, 2002 at paras. 1-3, 46.

designation of “directory services” identifying the directory services exemption, instead of a more limited one, fully aware that EDA existed, was growing and should be characterized as directory services. In turn, the Commission, itself, has recognized that the scope of the term “directory services” includes EDA as part of the natural evolution of DA. As the Commission recently stated, “Enhanced DA services are DA services that offer additional features such as multiple listing from a single call or concierge services.”⁴ Thus, neither Congress nor the Commission has felt the need to delimit the scope of the services that can be provided in the directory context using 411 or toll free numbers, nor sought to place further limits on the provision of those services other than recognizing that DA and EDA necessarily involve a form of pre-existing relationship, presubscription or comparable arrangement between a carrier and its customer.⁵ In other words, DA and EDA are provided to subscribers to a DA/EDA carrier’s service and are not offered on a casual calling pay-per-call basis.

Interpreting the ambiguities in Section 228 of the Act and the Commission’s pay-per-call rules to apply to content enriched concierge services offered by DA/EDA carriers would not advance the public policy concerns that drove the passage of Section 228. Congress first enacted Section 228 of the Act in 1992, to protect consumers from the fraudulent and deceptive billing practices of certain pay-per-call service providers, and to provide consumers with recourse to dispute their associated charges.⁶ Continued abuses,

⁴ DLI NPRM at para. 47.

⁵ The Use of 411 and Other Abbreviated Dialing Arrangements, CC Docket No. 92-103, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572 at fn. 67.

⁶ The House Report on the Telephone Disclosure and Dispute Resolution Act (“TDDRA”) explains that “[l]egitimate users of [900 services] offer consumers a new method of purchasing goods and services . . . [but] because of its low barriers to entry and ability to piggyback on the telephone industry’s billing system, the pay-per-call industry has also attracted the attention of unscrupulous marketers.” H.R. 102-430

including unauthorized billing for pay-per-call services and failure to fully inform consumers about the charges associated with certain services, led Congress to amend Section 228(c) in 1996 to impose more stringent billing requirements on providers of pay-per-call services.⁷

In contrast, the offering of DA/EDA services by DA/EDA carriers and their affiliated agents does not involve the misconduct Congress designed Section 228 to remedy because in each case some form of a pre-existing relationship or presubscription or comparable arrangement already exists between the carrier and the subscriber which sets forth the rates, terms and conditions for the provision of EDA. Further, as described below, the use of toll free numbers to provide EDA, such as Infone's EDA service, is extremely important from a competitive market view point because it is the only existing viable avenue today that promotes retail DA/EDA competition, again using the existing presubscription or comparable arrangement requirements that Section 228 of the Act already permits.

In assuring the level playing field that the Telecommunications Act of 1996 intended in the provision of telecommunications services such as directory services, the Commission should keep in mind that not all directory service providers have a claim on 411 as the principal form of access for such services.⁸ Although this is true for dominant

(1992), LEXIS 102 H. Rpt. 430. These third party marketers "charg[ed] consumers exorbitant rates for shoddy good or a useless service," or engaged in "deceptive price advertisements," promised credit cards to "low income consumers," and used a quiz service to convince a disabled person to believe "he had won [but] he never received any prizes . . . and incurred over \$8,000 in phone charges." *Id.* Congress therefore enacted section 228 to "give the Federal Communications Commission the authority to prescribe regulations and enforcement procedures and conduct oversight to protect consumers...against [these and other] abusive practices by audiotext providers."

⁷ Policies and Rules Governing Interstate Pay-Per-Call And Other Information Services Pursuant to the Telecommunications Act of 1996 ("800 NPRM"), 3 CR 953 (1996) at para. 12.

incumbent ILECs and their wireless affiliates such as, for example, SBC/Bell South/Cingular Wireless and Verizon/Verizon Wireless, competitive directory service carriers such as Infone, rely on retail customers accessing their service through toll free numbers whereby the caller (i) presubscribes to Infone's DA/EDA services, (ii) is connected to Infone for free via the 800 or 888 number, and then (iii) pays for the DA/EDA services rendered by using a major commercial credit card. In conformance with the subscriber verification procedures set forth in Section 228(c) of the Act, Infone uses "voice prints" (made possible by receipt of CPN or ANI by Infone from connecting carriers) and PIN numbers to further authenticate its presubscribed callers' identities on a real time basis in delivering its service.

Infone's presubscription arrangements with its subscribers are performed by telephone and/or electronically via the web, generally with confirmation of the arrangement electronically transmitted over the web. In this environment, which is becoming the norm for subscribed telecommunications and other services, it would be unwise and unproductive for the Commission to introduce new requirements not already found in 47 U.S.C. 228.⁹ Moreover, in the case of

⁸ Indeed, the DLI NPRM recognizes this fact and is considering ways to promote retail competition in the delivery of DA retail services to the public. DLI NPRM at 4.

⁹For example, the Further 800 NPRM recognizes, the E-Sign Act provides that properly authenticated electronic records are as valid and enforceable as written contracts thereby obviating the need for written contracts. Id. at para. 24. In turn, state laws generally provide that such electronic agreements have the same force of law even though they are not literally "executed."

For example California Civil Code, Title 2.5 "Electronic Transactions," Section 1633.1 et seq. provides in pertinent part:

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

Section 1633.7 of the California Civil Code.

The effect of an electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

telephonic presubscription using credit cards, the subscriber still must provide voice verification and/or a PIN number when utilizing Infone's EDA services. These state-of-the-art security protections for both the directory services carrier and its subscriber are more than adequate safeguards for the provision of DA and EDA services under Section 228(i), either as exempt directory services offered by a common carrier or under the exemption accorded a carrier when utilizing qualifying presubscription or comparable arrangements. See Section 228(i)(2) of the Act.¹⁰

3. Retail Directory Services Competition Can Be Promoted, Consistent With The Language of 47 U.S.C. 228, Without Adding Further Rule Requirements Or Delimiting Directory Services Provided Either By Voice or Data.

To the extent that data can be provided as part of DA or EDA it, too, should also qualify for the directory services exemption. When the Commission first adopted its pay-per-call rules, the market for information services was drastically different. The Internet was still in its nascent stages and consumers did not have the ability to access a wide variety of content through both wireline and wireless applications as they can today. Internet-based services are exempt from Title II regulation, including the pay-per-call requirements. Carriers providing wireless data DA and EDA should be treated in the same regulatory manner when delivering content that can be delivered by voice. There is no policy reason to regulate equivalent voice EDA, wireless or wireline, differently from data EDA, just because the customer is accessing one via a live operator and the latter via a

Section 1633.9 of the California Civil Code.

¹⁰ It should be noted that Section 228(c)(D)(ii) of the Act also provides a safe harbor for directory services providers insofar as not having to rigidly conform to the precise presubscription agreement requirements of Section 228(c)(7)(C).

data link. Both are enhanced directory services of DA/EDA carriers and should be accorded the same treatment under the directory services exemption.

As the Commission has recognized, in order for the “communications industry to better serve the public, regulatory policy should strive to eliminate barriers and to facilitate the provision of new services.”¹¹ As a practical matter, if a subscriber can contact an EDA common carrier or affiliate for the same service or product in data form instead of by voice request there should be no differing regulatory treatment. In either case, the subscriber and the carrier are protected by a pre-existing relationship with the subscriber such as a presubscription or comparable arrangement which is the hallmark of a directory service and accounted for under the current statutory scheme.

Conclusion

The Commission should not adopt any rules that would change the exemptions under Section 228 that already apply to directory services, including enhanced directory assistance services, whether accessed by the public on wireline or wireless networks, using 411 or toll free arrangements. Moreover, the same directory services exemption should be accorded for data services delivered as part of directory assistance and enhanced directory assistance.

Respectfully submitted,

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¹¹ In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, Notice of Proposed Rulemaking, 17 FCC Rcd 24135 para. 2 (2002).

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CERTIFICATE OF SERVICE

I, Peter A. Casciato, hereby certify that on this 15th day of November 2004, the foregoing Comments of Metro One Telecommunications, Inc. were filed electronically on the FCC's Electronic Comment Filing System and electronic copies were served via electronic mail to the following:

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